

Eric J. Lobenfeld (EL-4560)  
Dillon Kim (DK-4121)  
**HOGAN & HARTSON LLP**  
875 Third Avenue  
New York, NY 10022  
Phone: (212) 918-3000  
Fax: (212) 918-3100

*Attorneys for Defendants  
ReProtect, Inc., Dr. Richard Cone,  
and Dr. Thomas Moench*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
Instead Sciences, Inc.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	08 CV 5236 (DLC)
	)	
ReProtect, Inc., Ultrafem Inc., Dr. Richard Cone,	)	
and Dr. Thomas Moench,	)	
	)	
Defendants.	)	
-----X		

**PLEASE TAKE NOTICE**, that upon the annexed declarations of Thomas Moench, sworn to the 30<sup>th</sup> day of July, 2008, and the exhibits attached thereto, and upon all prior papers and proceedings heretofore, the undersigned will move this Court, before the Honorable Denise L. Cote, United States District Judge, United States District Court, Southern District of New York, at the United States Courthouse, Courtroom 12A, 500 Pearl Street, New York, New York 10007, at a date and time as shall be set by the Court, for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the complaint of plaintiff Instead Sciences, Inc. ("Instead") in its entirety with prejudice as against defendants ReProtect, Inc., Dr. Richard Cone, and Dr. Thomas Moench (collectively, "ReProtect Defendants"), and granting such other and further relief as this Court may deem appropriate. Oral argument, if any, will be on a date and at a time to be designated by the Court.

**PLEASE TAKE FURTHER NOTICE** that, opposition papers, if any, shall be served by Plaintiff within ten business days after service of the motion papers in accordance with Rule 6.1(b) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York.

Dated: July 31, 2008  
New York, NY

Respectfully submitted,

**HOGAN & HARTSON LLP**

By: \_\_\_\_\_ /s/  
Eric J. Lobenfeld (EL-4560)  
Dillon Kim (DK-4121)  
**HOGAN & HARTSON LLP**  
875 Third Avenue  
New York, NY 10022  
Phone: (212) 918-3000  
Fax: (212) 918-3100

*Attorneys for Defendants  
ReProtect, Inc., Dr. Richard Cone,  
and Dr. Thomas Moench*

TO: Robert S. Weisbein (0080)  
**FOLEY & LARDNER LLP**  
 90 Park Avenue  
 New York, NY 10016-1314  
 Phone: (212) 682-7474  
 Fax (212) 687-2329  
[rweisbein@foley.com](mailto:rweisbein@foley.com)

Victor A. Vilaplana, Esq.  
**FOLEY & LARDNER LLP**  
 402 West Broadway - Suite 2100  
 San Diego, CA 92101-3542  
 Phone: (619) 234-6655  
 Fax: (619) 234-3510  
[VVilaplana@foley.com](mailto:VVilaplana@foley.com)

*Attorneys for Plaintiff Instead Sciences, Inc.*